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**TARGETED KILLING, AN OPTION FOR THE OPERATIONAL COMMANDER**

**by**

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**A paper submitted to the Faculty of the Naval War College in partial satisfaction of the requirements of the Department of Joint Military Operations.**

**The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.**

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**06 November 2007**

## **Abstract**

This paper examines the viability of targeted killing as a tool for the operational commander. Targeted killing, not to be confused with assassination is the intentional slaying of a specific individual or group of individuals undertaken with explicit government approval. The author reviews current U.S. and international legal basis to illustrate the unclear context of targeted killing. Included is an examination of rules of self-defense and law of armed conflict related to the current Bush Doctrine of preemption. Following a historical review of U.S. actions, an analysis of targeted killing heads of state and transnational terrorists concludes that the U.S. should not target political leaders but should indeed target transnational terrorists. The author recommends that the planning and execution should be done at the operational level of war and makes recommendations to the operational commander for improving likelihood of success.

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## INTRODUCTION

The decision to conduct a targeted killing is a result of weighing operational and strategic impacts against tactical challenges that this course of action (COA) entails. The operational commander occupies the optimal position in the chain of command to make this determination. Few acts committed in war or peace are as difficult to accomplish and have as much operational and strategic impact. To demonstrate, consider this scenario:

It is 1000 hrs. in the foothills of Eastern Afghanistan. A small US Navy SEAL element, tasked with gathering intelligence, has been tracking a group of suspected al Qaeda operatives. The suspected terrorists appeared on a well-traveled, rugged route emanating from Pakistan three days earlier. This morning two trucks, the SEALs observe, meet the group. To the surprise of the SEAL platoon commander a person that appears to be Ayman al-Zawahiri steps out of the second truck. For a fleeting few minutes from their concealed position, the SEALs have what looks like the al Qaeda number two man in their crosshairs as he prepares to depart in the other vehicle. Do they shoot? Can they shoot? Is there any doubt in the operators mind? Is the chain of command prepared for this stroke of good luck and are they prepared for the consequences of pulling or not pulling the trigger?

This author will examine a few of the issues embedded in this scenario. Answers to questions that seem obvious can be clouded and, if not addressed in advance, will likely impair an operation. This paper proposes that the practice of assassination of political leadership is not in the best interest of the United States but a policy of engaging in the targeted killing of terrorists is indeed a viable course of action and should be planned for at the operational level of war. In the above scenario, the SEALs should have been expected to pull the trigger.

This paper will examine the viability of targeting political leadership and targeting transnational terrorists. It will begin with a discussion of terms and definitions since the topic is ripe with parallel definitions and terms are often interchanged mistakenly. A handful of oft-misunderstood terms such as assassination, target killing, and combatant are essential to the discussion. It will then look at current legal debate to shed light on the controversy surrounding this topic. An examination of this material including international self-defense rights and portions of the Law of Armed Conflict is vital to understanding current and future policy concerns. A brief historical review of assassination and targeted killing is included in order to illuminate the reason for confusion at the national and international levels. Unintended yet apparent inconsistency between perceived policy and actual events could cost the US worldwide legitimacy. Finally, recommendations are offered to effectively apply the lessons to the conflict of today and tomorrow at the operational level of war. The author asserts that targeting political leadership is a poor policy but targeting terrorists is a different story.

Assassination is a misunderstood term. There is no universally accepted definition in international law and to further complicate matters; the meaning changes from wartime to peacetime<sup>1</sup>. In general terms, Webster defines assassination as “killing by violence.”<sup>2</sup> Further explanation differentiates between occurrences in peacetime and at war. Assassination during armed conflict is “the targeting of a specific individual by treacherous or perfidious means.”<sup>3</sup> In peacetime, it is “murder [illegal killing]\* of a targeted individual for political purposes.”<sup>4</sup> The point is not to choose one definition over another but to

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\* Added for emphasis

understand that depending on context, assassination is either a treacherous act or an illegal act. Stated US policy appears consistent with these definitions.

Likewise, there is no consensus definition for targeted killing.<sup>5</sup> This phrase has become more prevalent as the fight against international terrorism has intensified. Targeted killing became a contentious front-page topic as the US responded to terrorist actions around the world and Israel garnered headlines for its aggressive counterterrorism efforts. For the purpose of this paper, targeted killing is defined as: "...the intentional slaying of a specific individual or group of individuals undertaken with explicit government approval."<sup>6</sup>

Assassination is often incorrectly substituted for the intended phrase, "targeted killing."

A combatant is defined as, "a person who takes an active part in the fighting and is a member of the armed forces of the state..."<sup>7</sup> Terrorists are unlawful combatants. They take part in armed conflict and are therefore treated as combatants and as lawful targets, but they do not differentiate themselves from civilians and do not obey the laws of armed conflict.<sup>8</sup> They are not afforded the rights of combatants, such as POW status.

## **UNITED STATES POLICY**

Any discussion on the merits of assassination and targeted killing for the U.S. should start with current U.S. policy, specifically Executive Order 12333. During the 1970's the Senate Select Committee with Respect to Intelligence Activities reported that the United States had been involved in five assassination plots against foreign government leaders. The Church Committee (chaired by Senator Frank Church) condemned a policy of assassination stating that: "short of war, assassination is incompatible with American principles, international order and legitimacy."<sup>9</sup> The committee recommended statutory prohibition of assassination

except in combat and wartime<sup>10</sup>. Congress did not pass this legislation but President Gerald Ford did act on the recommendations and included an assassination ban in Executive Order 11905. Executive Order 11905 has evolved into Executive Order 12333, “United States Intelligence Activities” last signed by President Ronald Reagan and includes the following sections:

2.11. Prohibition on Assassination. No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.

2.12. Indirect Participation. No agency of the Intelligence Community shall participate in or request any person to undertake activities forbidden by this Order.<sup>11</sup>

This is not as clear-cut as it may appear. Nowhere in the order is assassination defined; nowhere in the order does it specify peacetime or wartime; and nowhere in the order does it differentiate between political leaders or other persons as targets of assassination. The Church Committee recommendations undoubtedly stem from secretive plots that they uncovered involving political leaders in such places as the Congo, Cuba and South America but this did not get clearly translated into the Executive Order. Was this an intended level of vagueness? Perhaps. RAND Corporation scholar and author Stephen Hosmer points out that this order has indeed restricted US involvement in covert attacks around the world but it has not provided guidance for lower level targeted killing beneath the political leader level.<sup>12</sup> This Executive Order ensures that authority, interpretation and oversight of assassination rest at the Presidential level and any sitting President has the authority to revoke the order.<sup>13</sup>



## **International Law**

There are two paths that lead to legal targeted killing of a combatant (lawful or unlawful): self-defense and action during armed conflict. During peacetime, it has to be self-defense since the law of armed conflict only applies to armed conflict between states.<sup>14</sup> The right of self-defense applies during peacetime or war; however, the factors that govern its use are different in each case. In times of peace, terrorist acts can also be classified as crime and conventional domestic law enforcement rules apply.<sup>15</sup> There is debate at the highest levels of US government, including the Supreme Court, over the nature of the ongoing conflict in Iraq, Afghanistan and the Global War on Terror in general.<sup>16</sup> Are the terrorist acts crimes or acts of war? The introduction of non-state actors conducting attacks against states has illuminated gray areas in international law. After 9/11, the nature of the conflict was shaped as the UN Security Council passed resolutions 1368 and 1373 which encouraged states to “work together to combat terrorism” and reaffirmed a states right to individual and collective self defense.<sup>17</sup> Domestically and concurrently, the US Congress authorized “all necessary and appropriate force” against those who carried out the attacks and “to prevent further acts of terrorism against the United States.”<sup>18</sup> The confrontation with transnational terrorists was described as an armed conflict. However, as the world moves years beyond 9/11 it is conceivable to see a softening of this position into a less kinetic law enforcement position.

Human rights groups promote the law enforcement model as the proper method for responding to terrorist attacks.<sup>19</sup> The law enforcement model puts strict restraints on the prosecuting force and emphasizes that the state obliges the rights of due process.<sup>20</sup> Any targeted killing under the law enforcement auspices would be considered extra-judicial and

therefore illegal.<sup>21</sup> “Intentional lethal use of firearms may only be used when unavoidable in order to protect life.”<sup>22</sup>

With the backdrop of the 2001 UN Security Resolutions and the language expressed by the US Congress, the Bush doctrine, based on preemptive self-defense, was born.<sup>23</sup> This was a new policy based on an armed conflict with a self-defense posture – the US must preempt in order to defend.<sup>24</sup> This is definitely not a law enforcement mindset. It remains clear today in the opening sentence of the 2006 National Security Strategy, “America is at war.”<sup>25</sup> Prior administrations responded to specific terrorist attacks with singular military actions. The Bush policy dictates constant preemption of terrorist acts over an indefinite period.<sup>26</sup>

Due to the current policy, the law enforcement approach is not as relevant to the operational commander. As such, this paper focuses on the targeted killing options in self-defense under peacetime rules and secondly, under the law of armed conflict. Importantly, it can be legal either way.

### **Self defense in Peacetime:**

Article 51 of the United Nations (UN) Charter states:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.<sup>27</sup>

Breaking down this article, the defensive acts may be collective or individual, other states may assist target states, and any defensive action can be conducted by a state coming to the assistance of another.<sup>28</sup> Michael Schmitt, a renowned professor of International Law, further expounds with his opinion in the case of terrorists with WMD. “...in WMD attacks, targeted

killing will generally be justified in all cases except where the likelihood of success in attempting to arrest or otherwise frustrate the terrorists approaches certainty.”<sup>29</sup>

The keystones of the law of self-defense are necessity, proportionality and immediacy.<sup>30</sup> In using force to counter terrorists, necessity requires that no other measure is available to stop an attack.<sup>31</sup> In operations outside armed conflict, this has proven to be the thorniest issue.<sup>32</sup> Can the terrorist be apprehended? Is the risk too great? Since today’s counter-terrorist operations often take place outside of the US, is the host nation cooperating? On foreign ground, the host nation must be informed and may elect to participate or may choose to act independently. Michael Schmitt presents a logical line of reasoning and draws the conclusion that, if a host nation refuses to address the problem, the necessity clause trumps the rules of sovereignty and a nation may act in self-defense inside the borders of the host or sanctuary nation.<sup>33</sup>

Proportionality in self-defense refers to the level of force used to deter a further attack. Only the force required to stop the attack is authorized.<sup>34</sup> In conducting a targeted killing it may be a question of destroying a small boat with a known terrorist onboard or waiting until the terrorist disembarks and therefore not killing the crew. In waiting, is the boat and crew that is not killed going to be used for terrorist acts in the future? Proportionality dictates that the entire boat and crew be destroyed if it is the last chance to stop an attack. Otherwise, one must wait.

The third factor, immediacy, has changed in the context of the war on terror. This factor raises the question: how soon do we need to act to defend ourselves? In the war on terror, a battle is no longer a Clauswitzian or Napoleonic fight with forces massing on different sides of a battlefield with inherent time to negotiate or find other than military means for

settlement. It is much harder to predict when the next attack will come. In the war against transnational terrorists, a campaign is assumed where an attack is always imminent.<sup>35</sup>

Therefore, this criterion of immediacy is not an obstacle in targeted killing terrorists after an initial attack.<sup>36</sup>

### **In Armed Conflict:**

In conflict, self-defense is still legal, however the law of armed conflict provides other options to justify the process based on international humanitarian law. The foremost difference in wartime is that an individual is targetable if he or she is a combatant or a civilian participating in direct hostilities.<sup>37</sup> As Michael Schmitt explains, the existence of armed conflict negates the previously discussed *ad bellum* requirement of necessity and proportionality.<sup>38</sup> The first step is to confirm the target is a combatant or a civilian directly participating in hostilities.

The second step is to consider the location. As in the self-defense route: If located in a neutral or third state sanctuary, the host nation bears responsibility and the US, for example, must first demand that the host put an end to the use of its territory as a base of operations or sanctuary.<sup>39</sup>

Lastly, Additional Protocol I of the Geneva Convention states, civilians are not lawful targets “unless and for such time as they take a direct part in hostilities.”<sup>40</sup> Therefore, there is legal basis for targeted killing civilians, but participation is an ambiguous term. The Israeli Supreme Court in its decision in *The Public Committee Against Torture vs. Israel* considered this topic in depth. This was the first judicial case directly discussing targeted killing.<sup>41</sup> According to the Israeli court, without a doubt, the degree of participation is subjective and must be decided in advance. This is far from black and white. Is the driver transporting a

terrorist a direct participant within the definition of Additional Protocol I (Art. 51-3)?<sup>42</sup> Is the strategist who devised the terrorist attack, but was not on the scene, a direct participant?

The next criterion is proportionality – not the aforementioned type applicable to self-defense. This proportionality refers to collateral damage. The collateral damage incurred by the targeted attack must be proportional to the military advantage gained.<sup>43</sup>

In summary, each case will vary and questions will need to be satisfied, but the bedrock criteria for targeted killing in armed conflict are: (1) level of participation, (2) location and (3) collateral damage vs. military advantage.

### **Historical Perspective**

History is replete with examples of nations interpreting targeted killing as a panacea for winning in war. The head of state and commander in chief indeed looks like a center of gravity worth attacking in most conflicts but it rarely pays off.<sup>44</sup> In this century the British planned killing Adolf Hitler in 1944, US planners proposed attacking Emperor Hirohito in 1945, Fidel Castro in the 1960's<sup>45</sup> and the Russians killed the president of the Chechen separatists in 1996.<sup>46</sup>

US activity includes Operation EL DORADO CANYON, a US aerial attack on Libya in 1986 conducted in response to the bombing of a German discotheque that resulted in the death of an American soldier. While attacking suspected terrorist barracks, the US bombed command and control nodes including Libyan President Mu'ammar Gadhafi's residence. This attack allegedly killed his fifteen-month-old daughter and injured others. Gadhafi escaped shaken but unhurt.

Targeted killings today are best exemplified by two recent events. In Yemen in November 2002 a CIA controlled Unmanned Aerial Vehicle (UAV) fired a Hellfire laser guided missile into a vehicle killing six men. One of the victims was al-Harethi, a senior al Qaeda lieutenant, suspected of orchestrating the attack on the USS Cole. The second incident was a UAV/Hellfire attack in the village of Damadola, Pakistan in January 2006.<sup>47</sup> The missiles were fired at the suspected location of al Qaeda number two, Ayman al-Zawahiri. On this occasion, Zawahiri escaped and approximately eighteen bystanders were killed.

During conflict, the US has been clear that it views heads of enemy states and warlords as combatants and therefore legal targets under the law of armed conflict.<sup>48</sup> This has been confirmed in attempts on General Aideed in Somalia and Slobodan Milosevic in the Balkans.<sup>49</sup> A recent example is the repeated attempts of killing Saddam Hussein in 2003 where the US is estimated to have made fifty strikes against the Iraqi dictator.<sup>50</sup> This perception that the enemy leader is indeed a center of gravity worth attacking while realizing the historical difficulty of success and the unintended consequences of a failed attempt is worth further analysis.

## CONCLUSIONS

### **Targeting Political Leadership**

When one looks objectively at the evidence, it is difficult to justify the effort and risk involved in targeting political leadership. In fact, it is nearly impossible. There are some significant time, space and force issues that surface. From a force perspective, the US has a high failure rate - not once has the US killed the target. Americans lives are put at significant risk pursuing a target who is sure to be well defended. Secondly, failure tends to rally

support for the target – internal and international. Thirdly, collateral damage raises international legitimacy issues when states and non-state organizations question the legality of the act. A fourth concern is the vacuum created by the loss of the enemy leader. It is possible that the replacement leader is no better, or that the void created results in chaos. Finally, history provides examples of restraint when not killing leaders favorably ended conflicts sooner with less bloodshed.

During Operation IRAQI FREEDOM, the US was zero for fifty in targeted attacks on Saddam Hussein.<sup>51</sup> The most powerful military in the world with the latest precision weapons was unable to hit the target. Of course, the weapons detonated at the desired location repeatedly but intelligence is so perishable in this type of time sensitive strike that failure is likely. During these fifty missions, risk to the actual trigger puller was not that significant since the Iraqi military had been defeated quickly but the cost in collateral damage was significant.<sup>52</sup> During Somalia operations in 1993, a US helicopter missile attack on a Somali leadership meeting in one of Aideed's headquarters did kill some of his Army staff. Though termed a success at the time, it did not kill Aideed but kill civilians. The raid enraged Somalis in Mogadishu, rallied sympathizers of Aideed, and absolutely demonized the Americans. This unintended consequence haunted the US four months later when Somali opposition manifested itself into the concentrated resistance on the streets that battled Army Ranger and special operations forces resulting in 18 Americans dead and many wounded.<sup>53</sup>

Legitimacy arguments stem from the US interpretation of international law. From a legal standpoint, the past US actions against heads of state are legal.<sup>54</sup> Arguably, the most controversial was the strikes in Libya in 1986. Representative to the UN Jeane Kirkpatrick presented the US case while the strike was in the air and cited UN Charter, Art 51:

The United States Forces have exercised the right of self-defense by responding to an ongoing pattern of attacks by the Government of Libya...<sup>55</sup>

Even though numerous other targets were hit, the fact that one of Gadhafi's residences was targeted made it appear as unilateral retribution and, not surprisingly, there was a large degree of international opposition.<sup>56</sup> French objection resulted in denial of over flight rights during the operation.

An additional concern is the internal effect created by the political decapitation. Predicting this effect is a difficult proposition especially in unfamiliar cultures. The targeted killing of a political leader may lead to serious unrest or a government that is not capable of governing, thus requiring further US investment in time and force to stabilize. A parallel can be drawn in post invasion Iraq. Although Saddam Hussein was not killed by the attempted direct attacks, he was forcefully removed and the result was the same. Poor assumptions and a misunderstanding of the effects of this type of political decapitation contributed to a post war morass. Citing this example does not suggest the U.S. should have left Hussein in power rather, the efficacy of follow-on governments is difficult to predict.

Planners must also keep in mind that the enemy political leader may, in the end, contribute to conflict resolution and their death would be detrimental. In World War II, the American plan to bomb the Imperial Palace in Tokyo is an example. Without Emperor Hirohito's guidance to the Japanese military to accept surrender terms, the allies would likely have faced a dangerous and costly ground offensive on the Japanese islands.<sup>57</sup> The killing of the Emperor, a Japanese deity would have further outraged the population. The lessons learned are too compelling; assassination should not replace statesmanship. To summarize, there are no documented U.S. successes, legitimacy is questioned at home and abroad,



collateral damage is inevitable, replacement governments might not be ready to lead and restraint has proven effective in the past. The US should avoid targeting political leadership.

### **Targeting Terrorist Leadership**

Leadership is critical to any insurgency  
Counterinsurgency, US Army Field Manual 3-24

Should we apply the above-mentioned lessons learned to terrorists today? Should the US treat Bin Laden and al-Zawahiri as political leaders? Today the threat of these non-nation states and potential weapons of mass destruction (WMD) has changed the calculus as the US weighs the targeted killing option. The US today has a targeted killing policy implicit in the war on terror and there is evidence that it should continue. Members of al Qaeda and its associated movements are viable targets for a number of reasons. They are key nodes in an enemy organization, targeted killing can minimize collateral damage especially in urban environments, and in the end, it is the only way to apply the military arm of the instruments of national power.

Although the network is decentralized, clues exist that indicate how centralized the grand strategy is. This is a possible critical vulnerability for the operational commander to exploit. Even al-Zarqawi, high ranking and at the time the head of al Qaeda in Iraq, displayed a lack of foresight in his letters to al-Zawahiri.<sup>58</sup> This indicates shallowness in the leadership of al Qaeda and an inconsistent understanding of the strategy. Al-Zawahiri explained in an October 2005 letter to al-Zarqawi of the importance of not enflaming the international Shia community. Four months later Sunni insurgents, apparently outside of al-Zarqawi's control, destroyed the revered Shia Samara mosque in Baghdad igniting extreme Sunni vs. Shia violence. As Daniel Statman, Israeli professor of philosophy summarizes, "The personal

charisma and professional skills of the leaders and key figures of certain organizations are crucial to the success of their organizations, something that is especially true of terror organizations...”<sup>59</sup>

Even for terrorists below the grand strategy makers in al Qaeda, operational commanders should develop targeted killing COA’s for possible targets believed to be in their Joint Operations Area (JOA). Arguably, the operational commander is in the best position to predict the effect of a targeted killing of a terrorist. He or she has the latest intelligence and should have the clearest picture of the local terrorist network. There is no doubt that eliminating nodes of the network will slow down the maturation of the organization and limit its effectiveness. Eliminate key decision makers and opportunity to get inside the opponents OODA loop is real.<sup>60</sup> The targeted killing of al-Zarqawi in Iraq has ostensibly contributed to the progress made by US forces against al Qaeda in Iraq.<sup>61</sup>

Perhaps the most persuasive argument for conducting targeted killing of terrorist leadership is to minimize collateral damage. Currently terrorists are finding sanctuary in lawless, ungoverned areas however, as large Muslim expatriate communities grow in Western cities the battlefield may soon change.<sup>62</sup> Targeted killing will be the only kinetic option available to kill terrorists in urban areas while minimizing collateral damage. Whether it is in the villages of Pakistan or the city blocks London, they present a difficult target for conventional forces to attack without destroying the surrounding infrastructure and killing innocent bystanders. Strategists and policy makers are supporting operational commanders to this end, as forces provided are better suited for this role. The growth of Special Operations since 9/11 reflects this reality.

Targeted killing makes more sense for disrupting terrorists than it does for political leaders. The options for stopping terrorists are not as obvious. Eliminating key leaders will disrupt decision-making and do so in a manner that minimizes collateral damage.

### **Capture?**

A viable counterargument to conducting a targeted killing is capture. Obviously, the United States has captured many suspected terrorists. There are thousands of detainees at Guantanamo Bay and Iraq. The immediate benefit of course is intelligence. There is no doubt that the capture of Khalid Sheik Mohammad, the highest al-Qaeda member captured to date, is reaping more rewards than killing him.<sup>63</sup> A public trial for the international audience at the proper time where all of the evidence is presented publicly might garner legitimacy in the Muslim world if carried out properly. A trial would also appease the faction that oppose targeted killing and describe it as an extra-judicial punishment.

In Peru, authorities had significant success derailing the brutal Shining Path terrorist group with the capture and display of a demoralized Abimael Guzman in 1992. The once feared terrorist was described as an overweight pensioner when publicly displayed in prison garb by Peruvian authorities.<sup>64</sup> The Shining Path still exists but it has not recaptured its place as a real threat to Peru.<sup>65</sup> Similarly, Turkey's capture of Kurdish leader Ocalan resulted in a weakening of the Kurdish armed group PKK although not its eradication.<sup>66</sup> Capture of course adds risk to forces. In Yemen, an attempt to apprehend al-Harethi left eighteen Yemeni law enforcement officials killed before the decision to eliminate him with Hellfire missiles.

## **RECOMMENDATIONS FOR THE OPERATIONAL COMMANDER**

As Lieutenant Colonel Michael McMahon, at the US Joint Special Operations University points out, “a successful operation to target an opponent’s leadership may well be a tactical or operational success, but ultimately lead to strategic failure. Therefore, tying the tactical and operational activities to the broad, national counterinsurgency and combating terrorism strategy is a critical component to success.”<sup>67</sup> The operational commander is the linchpin in effective targeted killing.

He or she should demand and anticipate clarification on the international law of armed conflict as it applies to non-state actors. A simple Internet search will result in dozens of articles from respectable entities expressing legal opinion. In the interim, continue to plan targeted attacks on specified terrorists. If wisdom prevails, the international community will view targeted killings like any other military target as described in Article 52 of Protocol I, a target that is by its nature, location, purpose or use makes an effective contribution to the enemy’s capability and by its destruction or capture enhance military objectives.<sup>68</sup> Also, expect change to Executive Order 12333. The reorganization of the US intelligence community underscores the need for this oversight order be rewritten or revoked. Much of the order is now passé.

Coordinate with applicable agencies and demand expansion of human intelligence (HUMINT) programs to the maximum extent. Successful targeted killing operations will rely on actionable intelligence. Collection measures put in place today will likely not return dividends for years but can be irreplaceable in terms of information gained. The al-Zawahiri miss in Pakistan underlines this fact if he indeed was not there when the missiles hit as was reported.<sup>69</sup> HUMINT takes time to cultivate but it is necessary for effective targeted killing

because it provides time to plan an attack. Culture differences, language barriers, and time required presumably make this task more challenging than ever. Predictive intelligence is a prerequisite if time is needed to launch an attack.<sup>70</sup> Without it, we rely on happenstance as in the hypothetical SEAL encounter earlier.

Push the decision to shoot down to the tactical level. It stands to reason that operators in direct contact have better situational awareness than a UAV operator looking through the limited scope of a camera lens. A well-briefed team can make a legal assessment including collateral damage more easily than a shooter peering through a Predator lens with limited scope and inherent system transmission delay. Less invasive weapons will also be available. In most targeted killing cases, it is arguably better to use a bullet over a missile since collateral damage is such an important factor.

Identify targets in advance and have preplanned responses in the tacticians back pocket should the opportunity to take the shot arise. This entails obtaining pre-authorization from the chain of command and would have to be revisited periodically as the strategic situation changes in the area of responsibility (AOR) or JOA. The forces authorized to take the shot is a consideration in this regard. More numerous conventional forces might have a better chance of finding a high value target than dedicated small numbers of unconventional forces. Nevertheless, if the decision to kill a high value target is pushed down to the tactical level, a smaller cadre like the SEAL element described above arguably is easier to control than a larger conventional unit. Limiting targeted killing to pre-planned missions might squander opportunity.

## SUMMARY

Assassination and targeted killing present a range of vexing issues. Multiple definitions exist and the terms are often innocently confused. Assassination should be better defined in national policy but in the interim, the U.S. should not engage in attempts at political decapitation during peacetime or war. The track record is poor and the risks on multiple fronts are too high. Nonetheless, the rise of transnational terrorism and the threat that it brings, especially when paired with WMD, present a viable case for a policy of targeted killing. The international legal body has not provided definitive clarification and may never provide black and white guidance on a number of issues that cloud this topic. As the belligerents change, there may always be confusion as how to classify the conflict between states and non-state terrorists. Even so, there are legal and justifiable means to target terrorist leaders as directed by the President and the Congress after 9/11. The military and its operational commanders, when used properly as an instrument and extension of US policy/power should be properly empowered to take advantage of fleeting tactical and operational opportunities that can lead to strategic victories in this war on terror.

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<sup>1</sup> US Army Judge Advocate Memorandum of Law (27-1a), Subject: Executive Order 12333 and Assassination, n.d., reprinted in *The Army Lawyer*, December 1989, p.4.

<sup>2</sup> *Random House Webster's College Dictionary*, s.v. "assassination."

<sup>3</sup> Mathew Machon, "Targeted killing as an Element of US Foreign Policy in the War on Terror" (monograph, School of Advanced Military Studies, US Army Command and General Staff College, Fort Leavenworth, Kansas, 2006), 14.

<sup>4</sup> Gary Solis, "Targeted Killing and the Law of Armed Conflict," *Naval War College Review* 60, no. 10 (Spring 2007): 129.

<sup>5</sup> Solis, "Targeted Killing," 127.

<sup>6</sup> Steven David, "Fatal Choices: Israel's Policy of Targeted Killing" *Democracies and Small Wars*. (2003). 139.

<sup>7</sup> Third Geneva Convention, Relative to the Treatment of Prisoners of War (Geneva III) August 12, 1949, Article 4.

<sup>8</sup> Solis, "Targeted Killing," 131.

<sup>9</sup> Machon, "Targeted Killing as an element." 18.

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- <sup>10</sup> The Church Commission. "Alleged Assassination Plots Involving Foreign Leaders," 1975, 257. Accessed at: [http://www.history-matters.com/archive/church/reports/ir/html/ChurchIR\\_0001a.htm](http://www.history-matters.com/archive/church/reports/ir/html/ChurchIR_0001a.htm).
- <sup>11</sup> U.S. President, Executive Order no. 12333, "United States Intelligence Activities," (December 1981).
- <sup>12</sup> Stephen, Hosmer, "*Operations Against Enemy Leaders*" (RAND, Santa Monica, CA, 2001), 12.
- <sup>13</sup> Zengel, LTC Patricia "Assassination and the Law of Armed Conflict" *Military Law Review* (Fall 1991), 123.
- <sup>14</sup> David Kretzmer, "Targeted Killing of Suspected Terrorists: Extra-Judicial Executions or Legitimate Means of Defence?" *The European Journal of International Law* Vol. 16 no.2, 186.
- <sup>15</sup> *ibid*, 174.
- <sup>16</sup> *Hamdan vs. Rumsfeld*. in *United States Supreme Court Reports* vol. 05-184, (2005), 6.
- <sup>17</sup> United Nations Security Council S/Res/1368, 1373.  
<http://www.un.org/Docs/scres/2001/sc2001.htm>. (accessed 15 October 2007)
- <sup>18</sup> United States Public Law 107-40, 115 Stat. 224  
<http://www.gpoaccess.gov/plaws/index.html>. (Accessed 15 October 2007)
- <sup>19</sup> Machon, "Targeted Killing as an element." 36.
- <sup>20</sup> Machon, "Targeted Killing as an element." 36.
- <sup>21</sup> Machon, "Targeted Killing as an element." 36.
- <sup>22</sup> Michael Schmitt, last chapter of unpublished book, 6.
- <sup>23</sup> Without a doubt, the Bush administration is classifying the conflict as a war, - The Global War on Terror. The first sentence in the 2006 National Security Strategy is: "America is at war."
- <sup>24</sup> President George W. Bush (Graduation Address at United States Military Academy, West Point, NY, 01 June 2002).
- <sup>25</sup> President Bush, National Security Strategy of the United States of America. 2006
- <sup>26</sup> President Bush West Point address.
- <sup>27</sup> United Nations Charter, Article 51.
- <sup>28</sup> Schmitt, 12.
- <sup>29</sup> *Ibid.*, 13.
- <sup>30</sup> *Ibid.*, 8.
- <sup>31</sup> *Ibid.*, 14.
- <sup>32</sup> *Ibid.*
- <sup>33</sup> *Ibid.*, 22.
- <sup>34</sup> *Ibid.*, 23.
- <sup>35</sup> *Ibid.*
- <sup>36</sup> *Ibid.*
- <sup>37</sup> *Ibid.*, 26.
- <sup>38</sup> *Ibid.*
- <sup>39</sup> *Ibid.*
- <sup>40</sup> Additional Protocol I to the 1949 Geneva Convention, Art. 51.3, 1977.
- <sup>41</sup> The Public Committee against Torture vs. Israel, para. 2. HJC 769/02.
- <sup>42</sup> Additional Protocol I to the 1949 Geneva Convention, Art. 51.3, 1977.

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- <sup>43</sup> Eden Kaplan, Council on Foreign Relations, “Backgrounder – Targeted Killings” [www.cfr.org/publication/9627/targeted\\_killing.html](http://www.cfr.org/publication/9627/targeted_killing.html), (accessed 22 Sept 2007).
- <sup>44</sup> Hosmer, p. xi.
- <sup>45</sup> Ibid., 5.
- <sup>46</sup> Ibid.
- <sup>47</sup> Associated Press, “Pakistan – At Least Four Terrorists Killed in Air Strike,” USA Today, 1/17/2006, [http://www.usatoday.com/news/world/2006-01-17-pakistan-strike\\_x.htm?csp=24](http://www.usatoday.com/news/world/2006-01-17-pakistan-strike_x.htm?csp=24), (accessed 29 Oct 2007).
- <sup>48</sup> Additional Protocol I to the 1949 Geneva Convention, Art. 51.3, 1977.
- <sup>49</sup> Hosmer, 13.
- <sup>50</sup> Schmitt, Michael (US Naval War College), interview by the author, 01 Oct 2007.
- <sup>51</sup> Ibid.
- <sup>52</sup> Ibid.
- <sup>53</sup> Hosmer, 40.
- <sup>54</sup> Additional Protocol I to the 1949 Geneva Convention, Art. 43.2, 1977.
- <sup>55</sup> Max Hilaire, “International Law and United States Military Intervention in the Western Hemisphere”, (Martinus Nijhoff Publishers, 1997), 135.
- <sup>56</sup> Schmitt interview.
- <sup>57</sup> Hosmer, p 34.
- <sup>58</sup> Letter from al-Zarqawi to al-Zawahiri 2005.
- <sup>59</sup> Daniel Statman, “Targeted Killing.” *Theoretical Inquiries in Law*, 69.
- <sup>60</sup> The Essential Boyd Website [http://www.belisarius.com/modern\\_business\\_strategy/hammond/essential\\_boyd.htm](http://www.belisarius.com/modern_business_strategy/hammond/essential_boyd.htm). (accessed 22 October 2007).
- <sup>61</sup> Thomas Ricks and Karen DeYoung, “Al-Qaeda In Iraq Reported Crippled”, The Washington Post 14 October 2007, sec 1. <http://www.washingtonpost.com/wp-dyn/content/article/2007/10/14/AR2007101401245.html>, (accessed 25 October 2007).
- <sup>62</sup> The 9/11 Commission Report, *Final Report of the National Commission on Terrorist Attacks Upon the United States* (New York, NY: W.W Norton & Co. 2003), 366.
- <sup>63</sup> Transcript of Combatant Status Review Tribunal Hearing for ISN 10024, Khalid Sheik Muhammad, 10 March 2007.
- <sup>64</sup> Turbiville, Graham H., “Hunting Leadership Targets in Counterinsurgency and Counterterrorist Operations”, 33.
- <sup>65</sup> Ibid., 34.
- <sup>66</sup> Hosmer, 21.
- <sup>67</sup> Turbiville, vii.
- <sup>68</sup> Geneva Convention, Article 52 of Protocol I,
- <sup>69</sup> Associated Press, “Pakistan – At Least Four Terrorists Killed in Air Strike,” USA Today, 1/17/2006.
- <sup>70</sup> Hosmer, xvii.